

MATTIE CONDRAY

From: Mark Moreau [ajmoreau@earthlink.net]
Sent: Monday, December 23, 2002 12:08 AM
To: mcondray@lsc.gov
Subject: Comments on 1611 Revisions

I would like to submit the following comments on the proposed revisions to 45 CFR 1611 set forth in 67 FR 70376:

Group Eligibility

I support the addition of 1611. 8 (a) (3) and (4). The current rules for group eligibility are so restrictive that LSC programs cannot work with groups whose principal (or only) function is to help a poor community or neighborhood. Given the limited resources of LSC programs, one of the most effective uses of LSC attorneys' time is to work with groups which have prioritized the legal problems of the poor in their community, have many poor people involved in their work, and which can contribute resources to the project undertaken. The current 1611 rule on group eligibility makes no sense because it precludes legal services programs from work with the groups in a poor community that are addressing that community's most important legal problems.

200% Poverty Exception in 1611.5

Raising the outside exception from 187.5% to 200% of poverty is a long overdue reform. It is an excellent revision for several reasons:

1. The poverty standard is no longer a true measure of poverty. The current 100% poverty standard was based on 3x a starvation diet in the 1950s and only adjusted for inflation since then. The defect in this methodology is that the major items in most poor people's budgets, housing, health and child care, have gone up by much more than inflation. Today, 200% of poverty is a closer approximation of "real" poverty than 100% of poverty.
2. In some parts of the United States, 200% of poverty is required to meet the standard of living provided by 100% of poverty in other parts. For example, in New York City, it would take an income of more than 200% of poverty to equal an income of 100% of poverty in rural Mississippi. This amendment would somewhat reduce the geographical inequities inherent in LSC's current use of the 125% and 187.5% poverty standards.
3. The average LSC program receives about 50% of its funding from non-LSC sources. Non-LSC funders of civil legal services tend to recognize the modern realities that 200% to 250% of poverty is a more accurate measure of poverty than the 125% of poverty used by LSC. Typically, non-LSC funders use higher poverty standards than LSC. It would be helpful if LSC would increase its eligibility to the higher standards used by other funders. Often other funders require matching funds and LSC's use of such a low standard as 125% and 187.5% of poverty makes it impossible to use LSC funds as matching or leveraging funds. As such, it handicaps LSC programs in competing for non-LSC funds and solving the legal and social problems that non-LSC funders want solved.

4. Use of 200% rather than 187.5% poverty will help reduce the waste of LSC funds that occurs when a LSC client must be dropped when the case is 90% completed because the client is a few dollars over 187.5%. The client is still too poor to hire a private attorney and is generally forced to complete his case by himself. This problem can really impact a domestic violence victim for whom we get alimony or child support. That additional income will often push them over the 187.5% poverty guideline. Then they are saddled with fighting a litigious abuser, who is almost always represented by an attorney, on their own. This is a very unfortunate situation given the intimidation and life safety issues involved in these cases.

Retainer Agreements

I applaud your elimination of the requirement of a retainer from the 1611 rules. It has no place in 1611. It wastes LSC resources in getting them when they are not needed and results in CSR undercounts (for no valid reason) when they are not in a client file.

Ethics 2000 will probably require written retainers in the future. Recipients should be trusted to comply with ethics rules and to adopt preventive malpractice considerations.

Asset and Net Income Definitions

The revisions to eliminate the distinction between liquid and non-liquid assets and to use net income rather than gross income are helpful. The current rules have been difficult for intake staff to understand and administer. The proposed rules are more clear, natural and intuitive. Centralized telephone intake will result in even greater staff turnover and it is, therefore, important to simplify eligibility rules to the extent possible. Decreased funding for legal services is also going to further a trend of more cutbacks in support staff who handle eligibility decisions. Therefore, it is important to simplify and streamline these eligibility rules. (The remaining support staff and attorney staff need to get the eligibility done as quickly and efficiently as possible).

Respectfully submitted,

Mark Moreau
Executive Director
New Orleans Legal Assistance